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Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Jane Roe, II,

Petitioner,

v.

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the issue "May a victim of an incomplete forced abortion sue the clinic for violation of the Freedom of Access to Clinic Entrances Act without revealing her real name to the public?" of such imperative importance as to justify deviation from normal appellate practice and to require immediate determination in this Court?

2. Is the issue "Was a cause of action under F.A.C.E. sufficiently pleaded where the complaint alleges the intent to violently obstruct an attempted-forced-abortion victim from leaving the clinic thus interfering with her attempt to get reproductive health services at another facility?" of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court?

PARTIES TO THE PROCEEDING

"Petitioner"

Jane Roe, II

"Respondents"

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., Patricia B. Windle and William P. Egherman, M.D.

NOTE TO THE UNITED STATES SUPREME COURT ABOUT RELATED ELEVENTH CIRCUIT CASES:*

Prospective Petitioners: Ray Sienkiewicz of *Sienkiewicz v. McDougall*, and *Sienkiewicz v. Hart, et al.*, U.S. Court of Appeals No's: 00-12634-II, 00-13805-II, and 00-14228-FF, F.A.C.E. actions for intimidating pro-life counselors with problems of judicial impropriety. Meredith T. Raney, Jr. in *Raney v. City of Melbourne* U.S. Court of Appeals No.: 00-11403-B. F.A.C.E. corollary to *Raney v. Aware Woman.*

Prospective Respondents: John McDougall in *Sienkiewicz v. McDougall* (1 and 2). Larry Hart, Janet Reno, William Clinton, Charles Wilson (of the Eleventh Circuit) and Jill Babyack in *Sienkiewicz v. Hart*. City of Melbourne, Florida in *Raney v. City of Melbourne.*

*The Petition For Writ of Certiorari has already been filed for *Raney v. Aware Woman Center For Choice, Inc, et al.*, 224 F.3d 1266 (11th Cir. 2000).

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First Reason: The issue, "May a victim of an incomplete forced abortion sue the clinic for violation of the Freedom of Access to Clinic Entrances Act without revealing her real name to the public?" is of such imperative importance that it justifies deviation from normal appellate practice and to require immediate deter-

mination in this Court? 5

Second Reason: The issue "Was a cause of action under F.A.C.E. sufficiently pleaded where the complaint alleges the intent to violently obstruct an attempted-forced-abortion victim from leaving the clinic thus interfering with her attempt to get reproductive health services at another facility?" is of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court. 5

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28 U.S.C. §2101(e). 2

Petitioner, Jane Roe, II, respectfully requests that a writ of certiorari be issued to review a case in the United States Circuit Court, Eleventh Circuit.

OPINIONS BELOW

The opinion of the District Court in *Jane Roe, II, v.. Aware Woman Center For Choice, Inc., et al.*, Case No.:99-850-CV-19-A, is shown as Appendix A. At this time, there is no opinion from the United States Court of Appeals, Eleventh Circuit.

STATEMENT OF JURISDICTION

Jane Roe, II filed an action for violation of her civil rights under 18 U.S.C. §248 (Freedom of Access to Clinic Entrances Act) in U.S. District Court, Middle District of Florida, Orlando Division pursuant to 28 U.S.C.§1391(b) because the claim arose in that district and also because the defendants reside in that district. There is federal jurisdiction because her claim arises under the laws of the United States according to 28 U.S.C. §1331. Additionally, since this is an action to recover damages under an Act of Congress providing for the protection of civil rights, jurisdiction was proper in the district court, under 28 U.S.C. §1343(a)(4).

An appeal was taken to the United States Court of Appeals, Eleventh Circuit, under the collateral appeal doctrine as reviewed in *Mitchell v. Forsyth*, 105 S.Ct. 2806 (1985), and first approved in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed.1528 (1949), as an exception to 28 U.S.C. §1291.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Because judgment has not yet been rendered in the Court of Appeals, Jane Roe, II relies also on 28 U.S.C. § 2101(e) for jurisdiction.

STATUTORY PROVISIONS INVOLVED

This case involves the federal statute called Freedom of Access to Clinic Entrances Act, (F.A.C.E.) 18 U.S.C.§ 248, which states in pertinent part:

> (a) **Prohibited activities.** - Whoever -
>
> **(1)** by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (c) **Civil remedies.** -
>
> **(1) Right of action**.-
>
> **(A) In general.**-Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services . . .
>
> **(e) Definitions.**- As used in this section:
>
> **(1) Facility.**- The term "facility" includes a hospital, clinic, physician's office, or other facility that provides reproductive health

services, and includes the building or structure in which the facility is located.

(2) Interfere with. - The term "interfere with" means to restrict a person's freedom of movement.

(4) Physical obstruction. - The term "physical obstruction" means rendering impassible ingress to or egress from a facility that provides reproductive health services . . .

(5) Reproductive health services.- The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

STATEMENT OF THE CASE

A. Background

The abortion clinic at 1564 Dixie Way received a great deal of notoriety in Melbourne, Florida when the United States Supreme Court approved a "buffer zone" injunction in its favor in *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994).

The local police thereafter were most subservient and took part in a program effective at removing all persons not specifically approved by the abortion clinic from the buffer zone sidewalk. The *personae non grata* included pro-life

referral counselors with up-to-date information about the hazards at that particular clinic and about alternative resources for pregnant women in the immediate area.

While Jane Roe, II had been a customer of this particular clinic before, she was not warned of its post-*Madsen* assembly line procedures and the increasing number of serious injuries to its female patients. Un-warned, Jane Roe, II did not learn of the new, brutal practices until it was too late. She was pinned violently to the table by four assistants after ordering the abortionist to stop; he then proceeded to jab through her vagina, severely slashing her uterus and colon, and killing - but not removing the unborn child - in the process.

After some delay, a rescue squad was permitted to take Jane Roe, II to an emergency room where she underwent major surgery and where the dead child was removed from her uterus.

B. The Proceedings Below.

Using the fictitious name of Jane Roe, II the Petitioner sued William P. Egherman, M.D., Aware Woman Center For Choice, Inc. and its owners and operators (jointly called Aware Woman) .for a violation of Freedom of Access to Clinic Entrances Act (F.A.C.E.). She was unlawfully and forcefully prevented from exiting the abortion clinic at 1564 Dixie Way, Melbourne, Florida in her attempt to avoid a brutal, life-threatening abortion at Aware Woman and was physically obstructed because she wanted to obtain other reproductive services; not only those of the rescue squad there at Aware Woman, but also those at the local hospital emergency room.

Jane Roe, II filed her Complaint in the Middle District of Florida, Orlando Division. Aware Woman responded with

motions to dismiss the Complaint.

Later, at the case management meetings, Aware Woman objected to Jane Roe, II's proceeding anonymously, although they admitted knowing her real identity.

As a result of this objection, a case management hearing was held by the Magistrate Judge who directed Jane Roe, II to file a motion to proceed anonymously; she complied with this instruction.

The District Judge thereafter entered an order dismissing the Complaint, with conditional leave to file an amended complaint, and denied the motion to proceed anonymously. The condition for amendment: forfeiture of anonymity. Notice of appeal was then timely filed.

After all briefs had been filed with the U.S. Court of Appeals, Eleventh Circuit, oral argument was set for August 31, 2000. Argument was then postponed until November 3, 2000, when all parties hereto addressed the panel of the circuit court. No decision has been received at this time.

This Petition is thus filed more than three months after appellate oral argument.

REASONS FOR GRANTING THE WRIT

I

The Petition should be granted because the issue, "May a victim of an incomplete forced abortion sue the clinic for violation of Freedom of Access to Clinic Entrances Act without revealing her real name to the public?" is of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court.

To the best of our knowledge, there is not a single case in which a federal judge has required that a woman who sought or obtained an abortion must forfeit her anonymity in order to obtain justice by way of civil litigation - with one exception: the present case.

The need for protection of unsuspecting young women from the various dangers in abortion clinics grows more imperative. All across this land, as are seen in the related cases, the independent referral counselors have been unlawfully barred from the doorways of abortion clinics where they could warn girls about such mortal hazards. These violations have resulted in an unknown number of deaths and injuries. This case may well be representative of a nationwide plague of violence, violence which is rarely reported because of the doubly embarrassing nature of the incidents, and violence which is rarely punished.

The lack of prosecution for forced abortion is probably due to confusion about exactly what law is violated, to the unwillingness of the victim to come forward , and often because, as in Melbourne, Florida, the justice system has become so subservient to abortion clinics.

While the United States Supreme Court inadvertently placed Aware Woman on a pedestal in *Madsen v. Women's Health Center,Inc.*, 114 S.Ct. 2516 (1994), this Court has always been most plain when describing a woman's right to privacy in an abortion-setting: "The decision to terminate a pregnancy is an intensely private one that must be protected in a way that assures anonymity." *Thornburgh v. American College of Obst,*. 106 S.Ct. 2169 (1986) at page 2181.

The concept of privacy, and anonymity regarding the abortion dilemma, was also discussed by this Court in *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992) at page

2832: "In all events, the identity of each woman who has had an abortion remains confidential."

This Court has also addressed the horrors visited upon a rape victim, when in *Coker v. Georgia*, 97 S.Ct. 2861 (1977), it stated at page 2869:

> It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's privilege of choosing those with whom intimate relationships are to be established. Short of homicide, it is the "ultimate violation of self".

Jane Roe, II now understands that the term "forced abortion" could be substituted for the word "rape" in the *Coker* (*supra*) analysis without changing the description in any way.

Moreover, there has been no objection by the press or public to Jane Roe, II's anonymity, only that of the Aware Woman parties. Still it is useful to visit this Court's decision in *Richmond Newspapers v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, which concerned the right to a public criminal trial. In discussing possible closure of trials, this Court stated, "All of the alternatives admittedly present difficulties for trial courts, but none of the factors relied on here was beyond the realm of the manageable". 65 L.Ed.2d at 992. So it is in *Jane Roe, II*.

This Court has steadfastly proclaimed its concern for women's lives and health in abortion cases from *Roe v. Wade*, 35 L.Ed.2d 147(1973), and *Doe v. Bolton*, 410 U.S.179(1973) to *Stenberg v. Carhart*, 147 L.Ed.2d 743(2000), all the while holding that reproductive choices are options derived from a woman's basic right to privacy, privacy which is obliterated if not protected by anonymity.

II

The Petition should be granted because the issue, "Was a cause of action under F.A.C.E. sufficiently pleaded where the complaint alleges the intent to violently obstruct an attempted-forced-abortion victim from leaving the clinic thus interfering with her attempt to get reproductive health services at another facility?" is of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court.

There is no doubt that effective use of F.A.C.E. by young women seeking reproductive health services is essential to protect them from violence and interference. It should not matter to the courts whether the violence emanates from pro-life sources or from pro-abortion sources. Unfortunately, this is not true.

A reading of the trial and appellate orders in the related cases, and the district judge's decision here, shows a partisan inclination to protect the abortion industry at the expense of young women and their benefactors: facts are misstated and the law, especially F.A.C.E., is twisted and misconstrued.

For example, a court of appeals discussed the motive requirement of F.A.C.E. as follows:

> FACE's motive requirement does not discriminate against speech or conduct that expresses an abortion-related message. FACE would, for example, apply to anyone who blockades a clinic to prevent a woman from getting an abortion - - - even if the workers were carrying signs that said "We are underpaid!" rather than "Abortion is wrong!" - - - Congress enacted

FACE to prohibit conduct that interferes with the ability of women to obtain abortions. *U.S. v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996) at page 923.

Jane Roe, II respectfully suggests to the Court that F.A.C.E. also protects women from conduct which interferes with their right not to choose abortion.

Jane Roe, II has stated in her complaint how at the beginning of the abortion, she knew that it was being done incorrectly. She demanded that the abortionist stop. Instead, she was violently pinned to the table by four assistants while the doctor tried to force her to undergo the abortion. Further, the record shows that while he succeeded in killing the unborn child, the abortionist did not remove it and that Jane Roe, II's uterus and colon were severely slashed.

Whether this savage treatment of Jane Roe, II flows from a sadistic nature, from greed or some perversity, she does not know. She does know that the Aware Woman people intentionally prevented her from receiving independent help from the rescue squad there at Aware Woman and they obstructed her exit from Aware Woman and entry to another facility, seeking other necessary reproductive health services. These services included removal of the dead baby and massive internal surgery. Nothing more should be required to show a most serious F.A.C.E. violation of Jane Roe, II's civil rights.

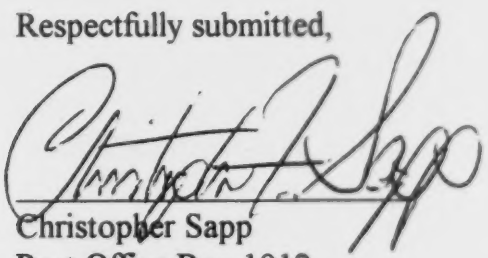
The Complaint passes the test in *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80(1957): it states facts on which relief can be granted. However, should this Court determine that amendment of the Complaint is necessary, then Jane Roe, II suggests that there should be no condition requiring her to first surrender her privacy/anonymity as the ticket price for entry into the legal arena.

It is critical that the young women of this nation be allowed the liberal use of F.A.C.E. to protect them from violence in abortion clinics, regardless of the source of such danger.

CONCLUSION

Jane Roe, II, respectfully requests that this Court grant a writ of certiorari in order to protect women's right to privacy and to safeguard the millions of pregnant girls and young women who, when dealing with crisis pregnancies, need protection from violence. The United States Supreme Court should review this case because it is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, DIVISION

Case No. 6: 99-CV-850-ORL-19A
(Filed: July 9, 1999)

JANE ROE, II,
Plaintiff,
v.

AWARE WOMAN CENTER
FOR CHOICE, INC.,
EDWARD W. WINDLE, JR.,
PATRICIA B. WINDLE, and
WILLIAM PHILIP EGHERMAN, M.D.,
Defendants.
_____/

ORDER

This cause comes before the Court on the following matters:

1) Defendant William P. Egherman, M.D.'s Motion To Dismiss (Doc. No. 8, filed August 3, 1999); Defendant William P. Egherman, M.D.'s Memorandum of Law in Support of Motion to Dismiss (Doc. No. 9, filed August 3, 1999); Plaintiff, Jane Roe, II's Response to Defendant William P. Egherman, M.D.'s Motion to Dismiss (Doc. No. 17, filed August 23, 1999);

2) Defendants, Aware Woman Center for Choice,

Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Dismiss Complaint (Doc. No. 12, filed August 16, 1999); Defendants' Memorandum of Law in Support of Motion to Dismiss Complaint (Doc. No. 13, filed August 16, 1999); Plaintiff, Jane Roe, II's Response to Defendants' Motion to Dismiss Complaint (Doc. No. 19, filed September 7, 1999);

3) Defendants, Aware Woman Center For Choice, Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Strike (Doc. No. 14, filed August 16, 1999); Defendants' Memorandum of Law in Support of Motion to Strike (Doc. No. 15, filed August 16, 1999); Plaintiff, Jane Roe, II's Response to Defendants' Motion to Strike (Doc. No. 18, filed September 7, 1999);

4) Plaintiff, Jane Roe, II's Motion to Proceed Anonymously Together with Supporting Memorandum (Doc. No. 24, filed November 12, 1999); Defendant William P. Egherman, M.D.'s Memorandum of Law in Opposition to Plaintiff's Motion to Proceed Anonymously (Doc. No. 26, filed December 1, 1999); and Defendants, Aware Woman Center For Choice, Inc., Edward W. Windle, Jr., and Patricia B. Windle's Memorandum of Law in Opposition to Plaintiff's Motion to Proceed Anonymously (Doc. No. 25, filed November 22, 1999).

I. BACKGROUND

On March 29, 1997, Plaintiff went to Aware Woman Center For Choice, Inc. (The "Center") to obtain an abortion.[1] See Doc. No. 1. During the procedure Plaintiff experienced

[1]An abortion, performed "in a facility" is considered a "reproductive health service" under FACE. See 18 U.S.C. § 248 (e)(5).

severe pain and made repeated requests that the Aware employees call an ambulance "to take her to the emergency room at the local hospital."[2] Id. At ¶¶ 17, 20. Plaintiff alleges that, before the ambulance arrived, the Defendants held her down, preventing her from leaving the Center. See id. Plaintiff concludes that Defendant's actions during the abortion amount to a violation of the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. §248 ("FACE"). Id.

All four Defendants, William P. Egherman, M.D., Aware Woman Center For Choice, Inc. ("Aware"), Edward W. Windle, Jr., and Patricia B. Windle, have moved to dismiss Plaintiff's complaint. The Defendants contend that Plaintiff has not and cannot allege a violation of FACE based on the events of March 29, 1997. In addition, Defendants object to Plaintiff bringing her claim anonymously.

II. LEGAL STANDARD

For purposes of a motion to dismiss, this Court must view the allegations of the complaint in the light most favorable to the plaintiff, consider the allegations of the complaint as true, and accept all reasonable inferences therefrom. Jackson v. Okaloosa County, Fla., 21 F.3d 1532, 1534 (11th Cir. 1994); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Furthermore, this Court must limit its consideration to the pleadings and written instruments attached as exhibits thereto. See Fed. R. Civ.P. 10 (c); GSW, Inc. v. Long County, Ga., 999 F. 2d 1508, 1510 (11th Cir. 1993). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove

[2]The emergency room of a local hospital would fall under the definition of a "facility." See 18 U.S.C. § 248(e) (1).

no set of facts that would entitle her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hunnings v. Texaco, Inc., 29 F.3d 1480, 1483 (11th Cir. 1994).

Conclusory allegations and unwarranted factual deductions are not accepted as true. Gersten v. Rundle, 833 F.Supp. 906, 910 (S.D. Fla. 1993) (citing Associated Builders, Inc. v. Alabama Power Co., 505 F.2d 97, 100 (5th Cir. 1974)). "However, when on the basis of a dispositive issue of law, no construction of the factual allegations of the complaint will support the cause of action, dismissal of the complaint is appropriate." See Executive 100, Inc. v. Martin County, 922 F.2d 1536 (11th Cir. 1991).

III. ANALYSIS

The Defendants argue that Plaintiff's complaint should be dismissed because it "fails outside the plain language and construction of (FACE) and therefore, Plaintiff is not entitled to pursue a civil remedy under the Act." Doc. No. 12, at ¶¶ 4 & 5; see also (Doc. No. 8 at ¶¶ 4 & 5) (citing Cheffer v. Reno, 55 F.3d 1517, 1519 n.2 (11th Cir. 1995)). Defendants also contend that Plaintiff's complaint must be dismissed because it fails to allege that Plaintiff "was seeking to obtain reproductive service and was prevented from doing so by some person . . . . [nor does it allege] in any respect that any person or group *prevented* her from obtaining reproductive health services." (Doc. No. 9, at 4 & 2) (emphasis provided). [3]

In order to determine whether the Plaintiff has

[3]Plaintiff need not allege that she was actually prevented from obtaining reproductive health services in order to allege a cause of action under FACE. FACE plainly covers mere attempts to prevent persons from obtaining reproductive health services. See 18 U.S.C. §248 (a).

successfully alleged an action under FACE, the Court must first set forth the elements of a FACE claim. To discern the elements of this relatively new cause of action, the Court will look to the text of the statute, its legislative history, and relevant case law.[4]

A. FACE

FACE provides in relevant part:

> (a) Prohibited activities. - -Whoever-
> (1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> . . .
>
> shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c) . . . .

The scope of the cause of action provided under sub-

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[4] The Court looks to cases which have applied FACE in a criminal and civil context because "[t]here is no indication in the statute that the elements of the prohibited activity" should differ. See 18 U.S.C. § 248; Greenhut v. Hand, 996 F.Supp. 372, 378, n. 4 (D.N.J. 1998).

section (c)[5] is clarified by the following definitions:

(1) Facility. - - The term "facility" includes a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(2) Interfere with. - - The term "interfere with" means to restrict a person's freedom of movement.

(3) Intimidate. - - The term "intimidate" means to place a person in reasonable apprehension of bodily harm to him - - or herself or to another.

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[5]Subsection (c) provides in relevant part:

> (A) In general.- - Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B) except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services. . .
>
> (B) Relief. - -In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

18 U.S.C. §248 (c) (1).

(4) Physical obstruction. - -The term "physical obstruction" means rendering impassable ingress to or egress from a facility that provides reproductive health services, . . .or rendering passage to or from such a facility . . . unreasonably difficult or hazardous.

(5) Reproductive health services. - - The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physicians office, or other facility, and includes medical, surgical, counseling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

18 U.S.C. §248(e).

Congress set forth its stated purpose in enacting FACE as follows:

> Pursuant to the affirmative power of Congress to enact this legislation under section 8 of article 1 of the Constitution, as well as under section 5 of the fourteenth amendment to the Constitution, it is the purpose of this Act [enacting this section and provisions set out as notes under this section] to protect and to promote the public safety and health and activities affecting interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services."

Section 2 of Pub.L. 103 - 259 (Congressional Statement of Purpose).

B. Elements

Although FACE is a relatively new statute and courts are just beginning to enunciate the elements of a civil action under the statute, at least three of the elements are well-settled.[6] See United States v. Wilson, 2 F. Supp.2d 1170, 1171 (E.D. Wisc. 1998). The first element is the defendant's act: the defendant must physically obstruct or attempt to obstruct a person's access to "a reproductive health facility." Id. The second element is the defendant's intent: the defendant must intend to "interfere with or [intend to] attempt [] to interfere with persons attempting to gain entrance or egress to [a facility]." Id. The third element is motive which requires that "the defendant's intentional interference . . . . with persons entering or exiting the clinic was done *for the express purpose of* preventing such persons from obtaining . . . reproductive health services." Id. (emphasis added).

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[6]Immediately after FACE was enacted, it was subjected to a flurry of challenges on various constitutional grounds. The courts faced with these cases reviewed the legislative history and text of the statute in great detail and opined on FACE's purpose and scope. See e.g., United States v. Soderna, 82 F.3d 1370 (7th Cir.), cert. denied, Hatch v. United States, 519 U.S. 1006 (1996); United States v. Dinwiddie, 76 F.3d 913 (8th Cir.), cert. denied, 519 U.S. 1043 (1996); United States v. Wilson, 73 F.3d 675 (7th Cir. 1995), cert. denied, 519 U.S. 806 (1996); Cheffer v. Reno, 55 F.3d 1517 (11th Cir. 1995); see also United States v. Gregg, 32 F.Supp.2d 151 (D.N.J. 1998); United States v. Scott, 958 F.Supp. 761 (D.Conn. 1997) ; United States v. Hill, 893 F.Supp. 1034 (N.D. Fla. 1994).

The Wilson court noted that the motive element is crucial to a cause of action under FACE, and it "makes the FACE law unique in that most crimes require only proof of an act and intent to so act. In contrast, FACE not only requires proof of the act and the intent, but also the requisite reason or motive for the intended action; here, to prevent the receipt or provision of reproductive health services." Id. at 1171-72.

The legislative history states that "FACE's motive requirement accomplishes . . . the perfectly constitutional task of filtering out conduct that Congress believes need not be covered by a federal statute." See H.R.Rep. No. 306, at 12; S.Rep. No. 117, at 24; see also Council for Life Coalition v. Reno, 856 F.Supp. 1422, 1427-28 (S.D. Cal. 1994) (holding that the inclusion of a motive element in an action under FACE does not violate the First Amendment). FACE's motive requirement targets specified conduct "while ensuring that FACE *does not federalize a slew of random crimes* that might occur in the vicinity of an abortion clinic." See United Stated v. Dinwiddle, 76 F. 3d 913, 922-23 (8th Cir.) (Holding that motive is an element of a FACE violation and comparing such motive requirement with the motive requirement imposed in Title VII causes of action) (emphasis added), cert. denied Dinwiddie v. United States, 519 U.S. 1043 (1996). Thus, it is clear that the motive requirement ensures that FACE will only be invoked to remedy "force, threats of force and physical obstruction . . .when such acts are intended to interfere with the right to obtain or provide reproductive health services.: See United States v. Scott, 958 F.Supp. 761, 775 (D.Conn. 1997) (holding that the motive element does not render FACE a content-based restriction on speech).

C. The Complaint

Plaintiff's allegation that Defendants prevented her egress from the Center, during the middle of an abortion procedure is insufficient to state a claim under FACE because

it fails to allege the requisite motive. Specifically, Plaintiff states that "Defendants violated (FACE) by preventing the egress of Plaintiff from (the Clinic) on March 29, 1997 when Defendants, and/or their employees, did unlawfully 'interfere with' [as defined by 18 U.S.C. §248(e)(2)], 'intimidate' [as defined by 18 U.S.C. §248(e)(3)], and use 'physical obstruction' [as defined by 18 U.S.C.§248(e)(4) to restrain Plaintiff and render impassable her desired egress from [the Clinic]." (Doc. No. 1, at ¶22).

Although Plaintiff has set forth facts which, viewed in the light most favorable to Plaintiff, may establish that Defendants prevented her egress from the Center; Plaintiff has failed to allege any fact which suggests that the Defendants prevented her egress in order to prevent Plaintiff from obtaining reproductive health services. The facts currently set forth by Plaintiff clearly fall into the slew of "random acts" which Congress did not intend to make subject to a federal statute. See Dinwiddie, 76 F. 3d at 922-23. Absent some allegation that the Defendants acted with the requisite intent and motive, Plaintiff's claim must fail.

IV. Anonymity

Plaintiff has moved to proceed anonymously in pursuing her FACE claim against Defendants. See (Doc. No. 24). Because Plaintiff is given leave to amend her Complaint to state a cause of action, the Court will consider Plaintiff's motion to proceed anonymously. Plaintiff argues that she is entitled to proceed anonymously because this is "an unusual situation in which the violence and abuse inflicted on the Plaintiff should be revealed to the public but the danger of harm to the Plaintiff and the sensitive and personal nature of the wrong require that her identity should not be disclosed publicly." Id. At ¶ 4.[7]

[7]The Court rejects Plaintiff's contention that she is entitled

Federal Rule of Procedure 10(a) requires that the title of a Complaint "include the names of all of the parties." The requirement that parties identify themselves when bringing an action in federal court is not lightly discarded because it is grounded in part on the constitutional concerns regarding the openness of judicial proceedings. Nonetheless, a party may proceed anonymously if the need for anonymity is sufficiently strong. See Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992). For instance, a plaintiff may proceed anonymously where the plaintiff is in real danger of physically harm or where matters to be revealed during the case are of the "utmost intimacy." See id. at page 324.

The Court does not find that the "presumption of openness in judicial proceedings" is outweighed by a substantial privacy right in this case. See id. at 323. The decision to obtain an abortion and the facts surrounding an abortion would certainly be considered a private matter to anyone faced with such a decision. Nonetheless, absent some additional circumstances necessitating anonymity, the privacy surrounding an abortion procedure cannot be preserved in the face of the public's interest in open judicial proceedings and the defendant's right to know the plaintiff's identity. Plaintiff has provided no factual support for her assertion that she faces "additional harm" from Defendants were they to discover Plaintiff's identity. See (Doc. No. 24).

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to proceed anonymously under Florida statutory law. See (Doc. No. 24, at ¶5) (citing Florida Statute § 794.026 which protects the identity of sexual battery victims). The Court also finds that Plaintiff is not entitled to invoke the physician-patient privilege to prevent disclosure of her name in this suit against her physician. See id. At ¶ 9. Finally, the Court notes that there is no support for Plaintiff's contention that Defendants have waived their right to object to Plaintiff's anonymity. (Doc. No. 24, at ¶2).

V. CONCLUSION

For the foregoing reasons, the Court **RULES**:

1) Defendant William P. Egherman, M.D.'s Motion to Dismiss (Doc. No. 8, filed August 3, 1999) is **GRANTED**.

2) Defendants, Aware Woman Center for Choice, Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Dismiss Complaint (Doc. No. 12, filed August 16, 1999) is **GRANTED**.

3) Defendants, Aware Woman Center for Choice, Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Strike (Doc. No. 14, filed August 16, 1999) is **DENIED** as **MOOT**.[8]

4) Plaintiff, Jane Roe, II's Motion to Proceed Anonymously (Doc. No. 24, filed November 12, 1999) is **DENIED**.

Plaintiff's Complaint (Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE**. The Plaintiff shall have ten days from the date of this Order to file an Amended Complaint. Failure to timely file an Amended Complaint that does not comply with the requirements of Federal Rule of Civil Procedure 10(a) will result in dismissal of the Complaint without further notice from the Court.

---

[8]Although the Court does not reach the merits of Defendants' Motion to Strike, the Court does caution the Plaintiff to conform with Federal Rule of Procedure requiring complaints to contain a short and *plain* statement of the claim. See FED.R.CIV. P. 8 (a)(2).

DONE AND ORDERED at Orlando, Florida, this 3rd day of January, 2000.

/s/
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record

(2)

Supreme Court, U.S.
FILED
MAR 15 2001
OFFICE OF THE CLERK

No. 00-1301

In The

Supreme Court of the United States

JANE ROE, II,

Petitioner,

v.

AWARE WOMAN CENTER FOR CHOICE, INC., A FLORIDA CORPORATION, EDWARD W. WINDLE, JR., PATRICIA B. WINDLE, and WILLIAM P. EGHERMAN, M.D.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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27 pp

QUESTIONS PRESENTED

The Respondents object to Petitioner's Questions Presented and offer the following as the correct issues to be considered on the Petition for Certiorari.

1. Whether this case is of such public importance as to justify deviation from normal appellate practice and to require immediate determination of the Supreme Court pursuant to Supreme Court Rule 11 and 28 U.S.C. § 2101(e).

2. Whether the District Court was correct in dismissing Petitioner's Complaint for failing to state a cause of action under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248.

3. Whether the District Court was correct in denying the Petitioner's motion to proceed anonymously.

CORPORATE DISCLOSURE STATEMENT

There is no parent corporation of Respondent, Aware Woman Center for Choice, Inc. and no publicly held company owns shares in the corporation.

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BRIEF IN OPPOSITION

Respondents Aware Woman Center for Choice, Inc., Edward W. Windle, Jr., and Patricia B. Windle respectfully request that the Petition for Writ of Certiorari be denied.

STATEMENT OF THE CASE

The Respondents object to Petitioner's Statement of the Case because it is factually incorrect, it contains irrelevant material, and it does not set out facts necessary to consideration of the questions presented. The Respondents, therefore, offer their own Statement of the Case.

This case is brought pursuant to the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 ("FACE"). Jane Roe II ("Roe") claims that Aware Woman Center for Choice, Inc., Edward Windle, Patricia Windle, (collectively "Aware Woman") and William Egherman, M.D., violated FACE when they took measures to protect her health during an abortion procedure where complications developed.

Course of Proceedings and Disposition Below

On July 9, 1999, Roe filed her complaint in the United States District Court for the Middle District of Florida, Orlando Division. The complaint alleged that Aware Woman and Dr. Egherman violated FACE on March 29, 1997 when they restrained her during an abortion procedure where complications had developed. Roe sought

compensatory and punitive damages in excess of one million dollars.

Dr. Egherman and Aware Woman filed motions to dismiss the complaint on August 3, 1999 and August 16, 1999, respectively. These motions were based on the fact that the allegations of the complaint did not state a claim under FACE.

Aware Woman also filed a motion to strike redundant, immaterial, impertinent and scandalous matters from Roe's complaint. This motion was based on Roe's repeated use of inflammatory statements related to the abortion procedure and clinic personnel.

Roe initially filed the complaint using a pseudonym. Thereafter, on November 11, 1999, at the direction of the district judge, Roe filed a motion to proceed anonymously.

On January 3, 2000, the district court dismissed the complaint, with leave to file an amended complaint, because Roe failed to allege any intent or motive on the part of the defendants to interfere with or prevent her from obtaining reproductive health services. The court also denied Roe's motion to proceed anonymously, finding that Roe's privacy concerns did not overcome the "presumption of openness in judicial proceedings." Finally, the court denied, as moot, Aware Woman's motion to strike, but cautioned Roe to comply with the Federal Rules of Civil Procedure requiring a short and plain statement of the claim in the event an amended complaint was filed.

Roe did not file an amended complaint. She filed her notice of appeal with the United States Court of Appeals for the Eleventh Circuit on January 12, 2000. The parties filed briefs and the Eleventh Circuit heard oral argument on November 3, 2000. To date, the Eleventh Circuit has not reached a decision on the appeal.

Statement of Facts

On March 29, 1997, Roe voluntarily came to the Aware Woman clinic to have an abortion. This was Roe's third abortion at the Aware Woman clinic. When Roe arrived she went through the normal checkin process prior to the procedure. During the procedure, complications arose. Roe requested that an ambulance take her to a local hospital emergency room. Dr. Egherman and the other clinic personnel continued to provide medical care to Roe in response to the complications that arose. In addition, an ambulance was called to take Roe to a local hospital emergency room. Roe was taken to the emergency room where she received further treatment.

Roe alleged in her complaint that Dr. Egherman and Aware Woman's actions violated FACE because they prevented her from immediately leaving the clinic during the abortion procedure after the complications had developed.

THIS CASE IS NOT OF SUCH IMPERATIVE PUBLIC IMPORTANCE TO REQUIRE A DEVIATION FROM NORMAL APPELLATE PROCEDURE

On January 12, 2000, Roe filed an appeal of the District Court's decision with the United States Court of Appeals for the Eleventh Circuit. Oral argument was heard before the Eleventh Circuit on November 3, 2000 and the parties await a decision. The Petitioner, however, requests that the Supreme Court review the District Court's decision before the Eleventh Circuit rules.

Supreme Court Rule 11, pursuant to 28 U.S.C. § 2101(e), provides that:

> A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative importance as to justify deviation from normal appellate procedure and to require immediate determination in this Court.

This basis for jurisdiction before the Court is rarely granted and when it is it involves matters of national public importance. *See Dames & Moore v. Regan*, 453 U.S. 654, 101 S.Ct. 2972, 41 L.Ed.2d 1039 (1981) (involving challenges to the resolution of the Iran hostage crisis); *United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 918 (1974) (involving the investigation of illegal executive and Presidential matters with certiorari granted before judgment by the Court of Appeals because of the public importance of the issues presented and the need for their prompt resolution).

Roe offers no legal precedent, coherent argument, or reasonable interpretation as to why her petition for a writ

of certiorari should be granted before the Eleventh Circuit rules. In fact, she confuses the issues considerably by intermingling allegations with the standard necessary to review a matter before the court of appeals issues a decision.

The threshold question, before considering the District Court's decision on certiorari, is whether Roe's claim is of "imperative public importance." Roe's complaint simply alleges violations of a federal statute and resulting money damages for those violations. Her arguments on "public importance" relate to her disdain for court rulings and abortion in general but never discuss how review of the court's decision in her case is of "imperative public importance."

Roe fails to address any of the requirements mandated by Supreme Court Rule 11, and, therefore, her petition for writ of certiorari should be denied.

THE DISTRICT COURT WAS CORRECT IN DISMISSING PETITIONER'S COMPLAINT FOR FAILING TO STATE A CAUSE OF ACTION UNDER THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT, 18 U.S.C. § 248

This action was brought pursuant to the Freedom of Access to Clinic Entrances Act of 1994 ("FACE"). 18 U.S.C. § 248. FACE provides in relevant part as follows:

> (a) Prohibited activities. – Whoever –
>
> (1) by force or threat of force or by physical obstruction, intentionally injures, intimidates

> or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> . . .
>
> shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c). . . .

In *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1995), the court recognized that Congress passed FACE "in response to increasing incidents of violence and obstruction at abortion clinics." *Cheffer*, 55 F.3d at 1519. The acts of violence noted by Congress "included at least 36 bombings, 81 arsons, 131 death threats, 84 assaults, two kidnappings, 327 clinic 'invasions,' and one murder." S.Rep. No. 117, 103 Cong. 1st Sess. 3 (1993). The stated purpose of the act is "to protect and promote the public safety and health and activities affecting interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services." *Cheffer*, 55 F.3d at 1519.

The Elements of a FACE Claim

In interpreting FACE, courts have discerned three elements necessary to establish a violation of the statute. The first element requires that the defendant physically obstruct, or attempt to obstruct, someone's access to a

reproductive health facility.[1] *United States v. Wilson*, 2 F. Supp. 2d 1170, 1171 (E.D. Wisc. 1999), *aff'd, United States v. Balint*, 201 F.3d 928 (7th Cir. 2000). Roe alleges in her complaint that the defendants prevented her from leaving the clinic by restraining her during the abortion procedure. The district court found that viewing this allegation in favor of the plaintiff, it alleged facts sufficient to show that her egress from the clinic had been obstructed. However, the court correctly determined that this element alone cannot support a violation of FACE.

The second element requires that the defendant intend by his obstruction to "interfere with or attempt to interfere with persons attempting to gain entrance or egress to said clinic." *Wilson*, 2 F. Supp. 2d at 1171. The third element requires that the defendant possess a particular motive. The intent to interfere with entrance or egress to a clinic must be with the "express purpose of preventing such persons from obtaining or providing reproductive health services." *Id.* Courts have noted that this motive requirement makes FACE unique in that most criminal statutes require only an act and an intent to so act. *See United States v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996), *cert. denied*, 519 U.S. 1043 (1996); *Wilson*, 2 F. Supp. 2d 1170; *United States v. Scott*, 958 F. Supp. 761 (D. Conn. 1997).[2]

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[1] A "reproductive health facility" includes a hospital, clinic, physician's office, or other facility that provides reproductive health services. 18 U.S.C. § 248 (e)(1).

[2] The elements of a cause of action under FACE are the same whether criminal or civil remedies are being pursued. *Greenhut v. Hand*, 996 F. Supp. 372, 378 n.4 (D.N.J. 1998).

The motive requirement of FACE was explained by the court in *Dinwiddie* as follows:

> What FACE's motive requirement accomplishes is the perfectly constitutional task of filtering out conduct that Congress believes need not be covered by a federal statute. Congress enacted FACE to prohibit conduct that interferes with the ability of women to obtain abortions. See H.R.Rep. No. 306, at 12; S.Rep. No. 117, at 23. FACE's motive requirement targets this conduct while ensuring that FACE does not federalize a slew of random crimes that might occur in the vicinity of an abortion clinic.

Dinwiddie, 76 F.3d at 923. The court likened FACE's motive requirement to the motive requirement of Title VII of the Civil Rights Act of 1964 which requires an employer's discriminatory act be "because of [the employee's] race, color, religion, sex or national origin." *Id.* Discrimination without the requisite motive does not violate Title VII. Likewise, obstruction without the requisite motive does not violate FACE.

Recently, the United States District Court for the Northern District of New York explained that the intent requirement of FACE is necessary to prevent the application of FACE to circumstances where it clearly is not meant to apply. As an example, the court stated:

> Plaintiff's interpretation of FACE's *mens rea* standard (such that one only need show obstruction to prove intent) could lead to ridiculous results. . . . Similarly, if a bomb threat required immediate evacuation of a reproductive clinic, individuals escorting patients and medical service providers out of the facility

> and/or preventing individuals from entering the facility could be liable under FACE. Contrary to Plaintiff's assertions, in these circumstances, the fact that an individual physically obstructed or literally interfered with provision of reproductive services would not suffice to establish a violation of FACE as the obstruction or interference was because of a threat to patients and providers safety rather than because the patients were receiving and the providers providing reproductive services.

Sharpe v. Conole, 123 F. Supp. 2d 87, 90 (N.D.N.Y. 2000).

Roe's Complaint

In this case, Dr. Egherman's and Aware Woman's acts were not intended to interfere with Roe's egress from the clinic in order to prevent her from obtaining an abortion. On the contrary, to the extent that Roe was restrained it was not intended to interfere with her leaving the clinic but rather to prevent further harm to her during the procedure. The defendants' purpose was not to prevent her from obtaining an abortion but to enable the doctor to complete the voluntary abortion procedure that had already begun and address the medical complications that had developed. This intent and motive is demonstrated in Roe's complaint by the allegation that after the complications arose clinic personnel and the doctor were attempting to insert an IV and otherwise provide medical treatment. The only reasonable inference from the facts alleged in the complaint is that Dr. Egherman and the clinic personnel were faced with a medical emergency and were taking those steps necessary to protect the

safety of the patient. Roe's conclusion that the defendants' acts were intended to prevent her from leaving the clinic and obtaining an abortion elsewhere simply is not reasonable given the facts. The acts were clearly intended to protect the health and safety of Roe during an abortion procedure, not prevent her from obtaining an abortion. As the court in *Sharpe* explained, such actions are not meant to come within FACE's prohibitions.

FACE is intended to protect abortion providers and patients against violence and threats of violence from persons who want to prevent abortions. Roe's complaint is an attempt to use FACE as a sword against people providing reproductive health services, the very people it was intended to protect. Roe was in the process of obtaining an abortion. Aware Woman and Dr. Egherman were in the process of providing the abortion. No one involved in the process had any motive to prevent Roe from obtaining the abortion. Thus, FACE clearly does not apply and cannot be invoked in this manner.

At most, Roe is alleging that the medical care she received at the clinic resulted in her injuries. In other words, she claims medical malpractice.[3] FACE clearly was not intended to federalize the medical malpractice field. Medical malpractice is one of the "slew of random

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[3] Aware Woman adamantly maintains that the care Roe received at the clinic met the standard of care required of doctors, clinics, and other personnel performing abortion procedures and that any malpractice claim by Roe is completely without merit. Furthermore, any malpractice claim would be barred by the applicable statute of limitations set forth in Fla. Stat. Ann. § 95.11, which may explain Roe's use of a clearly inapplicable federal law to seek damages.

[acts]" that might occur at an abortion clinic that were not intended to fall within the prohibitions of FACE. Thus, the district court was correct when it dismissed Roe's complaint and certiorari should be denied.

THE DISTRICT COURT WAS CORRECT IN DENYING THE PETITIONER'S MOTION TO PROCEED ANONYMOUSLY

Roe filed a motion to proceed anonymously in this matter, alleging that information of the "utmost intimacy" would be disclosed during the proceeding. Presumably, the information of the "utmost intimacy" which would be disclosed is the fact that Roe was allegedly injured during an abortion procedure.

Any review of a motion to proceed anonymously must begin with the general rule that parties to a lawsuit must identify themselves in their respective pleadings. *Doe v. Frank*, 951 F.2d 320, 322 (11th Cir. 1992). *See* Fed. R. Civ. P. 10(a) (requiring a complaint to include the names of all parties). The court recognized in *Doe v. Frank* that the "rule serves more than administrative convenience. It protects the public's legitimate interest in knowing all of the facts involved, including the identities of the parties." *Frank*, 951 F.2d at 322. Thus, it is only appropriate in exceptional cases to allow a plaintiff to proceed anonymously. *Id.* at 323.

The ultimate test in determining whether the plaintiff may proceed anonymously is whether the plaintiff has a substantial privacy right that outweighs the presumption of openness in judicial proceedings. *Id.* Review of the

cases authorizing the use of fictitious parties reveals certain common circumstances. *See Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981); *Southern Methodist Univ. Ass'n v. Wynne & Jaffe*, 599 F.2d 707 (5th Cir. 1979). These circumstances are: (1) plaintiffs challenging governmental activity; (2) plaintiffs required to disclose information of the utmost intimacy; and (3) plaintiffs compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution. *Frank*, 951 F.2d at 323, *citing Stegall*, 653 F.2d at 185. These factors are not intended as a rigid, three-step test, but are highlighted as factors deserving attention. *Frank*, 951 F.2d at 323.

In *Wynne & Jaffe*, the plaintiffs included certain individual attorneys who wished to proceed anonymously in the sex discrimination lawsuit filed against a local law firm. The attorneys alleged that they would suffer socially and economically if it was generally known that they were parties to the lawsuit. *Wynne & Jaffe*, 599 F.2d at 711. In denying the motion to proceed anonymously, the court noted that prior cases authorizing anonymity involved parties challenging the constitutional, statutory or regulatory validity of governmental action. In contrast, this case involved a civil action against another private party where "the mere filing of [such an action] against other private parties may cause damage to their good names and reputation and may also result in economic harm. Defendant law firms stand publicly accused of serious violations of federal law. Basic fairness dictates that those among the defendants' accusers who wish to participate in this suit as individual party plaintiffs must do so under their real names." *Id.*

In *Stegall*, the issue raised was the constitutionality of prayer and Bible reading exercises in schools. The court held that the challenge to the governmental activity relating to religion, as well as evidence of harassment and violent reprisals, satisfied the conditions necessary to proceed anonymously. *Stegall*, 653 F.2d at 186. The court also noted as significant that the plaintiffs in this case were children. *Id.*

In *Frank*, the plaintiff sued his employer for employment discrimination, claiming he was wrongfully fired because of his alcoholism. It was the fact that he was an alcoholic that the plaintiff advanced as the substantial privacy interest worthy of protection. However, the court held that the fact that one may suffer some personal embarrassment, standing alone, does not justify proceeding under a pseudonym. *Frank*, 951 F.2d at 324. In so ruling, the court held that:

> Lawsuits are public events. A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity. The risk that a plaintiff may suffer some embarrassment is not enough. This case does not present such an unusual situation in which the need for party anonymity outweighs the presumption of openness. Therefore, the district court did not abuse its discretion in denying Doe's motion.

Frank, 951 F.2d at 324.

In this case, Roe alleges that because the suit involves alleged injuries received during an abortion procedure, anonymity should be allowed. There is certainly no rule that all cases involving abortion may proceed anonymously. Roe relies on the case of *Thornburgh v. American College*, 476 U.S. 747, 106 S.Ct. 2169, 90 L. Ed. 2d 779 (1986) to support her position that abortion cases must proceed anonymously. First, this case has been overruled by *Planned Parenthood v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L. Ed. 2d 674 (1992). Second, the issue in *Thornburgh* was not whether a party could proceed anonymously in a lawsuit filed in the federal courts but rather the validity of state reporting requirements related to abortions. The fact that the Court has recognized that abortion may be a private matter, as may be any medical procedure, does not require that parties to a lawsuit involving abortion be allowed to proceed anonymously.

Those cases involving abortion that have proceeded anonymously, *e.g., Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L. Ed. 2d 147 (1973); *Doe v. Mundy*, 514 F.2d 1179 (7th Cir. 1975); *Doe v. General Hospital*, 434 F.2d 427 (D.C. Cir. 1970), involved a challenge to governmental activity that required the plaintiff to admit to engaging in illegal activities, in addition to revealing the fact that the plaintiff requested or had an abortion. *Wynne & Jaffe*, 599 F.2d at 713.

Quite unlike the above cases, Roe is seeking money damages against private individuals alleging injuries received during a legal medical procedure. Claims of alleged medical malpractice involving abortions do not routinely proceed anonymously. *See e.g., Adams v. Family Planning Assoc. Med. Group, Inc.*, 733 N.E.2d 766 (Ill. App.

2000) (involving wrongful death claim arising out of an abortion procedure); *Greene v. Legacy Emanuel Hospital and Health Care Center*, 997 P.2d 265 (Or. App. 2000) (involving medical malpractice claim where plaintiff's colon was perforated during an abortion). While it may be embarrassing to admit to an abortion, such embarrassment is not enough to outweigh the presumption of openness in judicial proceedings. This is especially true where the allegations of the lawsuit impugn the professional reputations of private individuals engaged in lawful activity and whose identities are fully exposed by the plaintiff's lawsuit.

The district court acted well within its discretion in denying Roe's motion to proceed anonymously. Certiorari should be denied on this issue also.

CONCLUSION

Roe's appeal is not of imperative public importance and, therefore, certiorari should not be granted in deviation from normal appellate practice. Additionally, the District Court was correct in dismissing Roe's complaint because she failed to state a claim under the FACE Act and holding that Roe could not proceed anonymously.

Based on the foregoing, Aware Woman Center for Choice, Inc., Edward W. Windle, Jr. and Patricia B. Windle respectfully request that the Court deny Roe's petition for a writ of certiorari.

Respectfully submitted,

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Case No. 00-1301:

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT OF THE UNITED STATES

JANE ROE, II

Petitioner,

vs.

AWARE WOMAN CENTER FOR CHOICE, INC., a Florida corporation, EDWARD W. WINDLE, JR., PATRICIA B. WINDLE, and WILLIAM P. EGHERMAN, MD.

Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For the Eleventh Circuit

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BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI OF WILLIAM P. EGHERMAN, M.D.

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QUESTIONS PRESENTED

1. Does the issue: "Whether a Complaint, which fails to allege that the Defendants engaged in physical obstruction of a reproductive health facility with intent to interfere with persons attempting to gain entrance to or egress from that clinic with the express purpose of preventing such persons from obtaining or providing reproductive health services, states a cause of action under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248," constitute an issue of such imperative public importance as to justify the deviation from normal appellate practice as to require immediate determination by this Court?

2. Does the issue: "Whether the filing of a Notice of Appeal of an order granting a Motion to Dismiss without prejudice to amend convert the District Court's order into a Final Order which is amenable to appellate review," constitute an issue of such imperative public importance to justify the deviation from normal appellate practice as to require immediate determination by this Court?

3. Does the issue: "Whether a Plaintiff in a lawsuit brought pursuant to the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 can proceed anonymously," constitute an issue of such imperative public importance as to justify deviation from normal appellate practice as to require immediate determination by this Court?

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STATEMENT OF THE CASE

The instant action was initiated with the filing of a Complaint Seeking Damages and Other Relief Under the Freedom of Access to Clinic Entrances Act ("FACE") and Demand for Jury Trial (the "Complaint") which the Plaintiff, Jane Roe, II, filed in the United States District Court for the Middle District of Florida, Orlando Division, on or about July 9, 1999. Because the disposition of this claim at the District Court level was in the form of an order granting a Motion to Dismiss Without Prejudice, and an order denying the Plaintiff's Motion to Proceed Anonymously, all factual allegations contained within the original Complaint are accepted as true. This is for the limited purpose of responding to Jane Roe's Petition for Writ of Certiorari to this Court, and does not constitute a waiver of any rights which William P. Egherman, M.D. ("Dr. Egherman") has to contest these factual allegations at a later time.

Dr. Egherman is filing the instant Opposition Brief to the Petition for Writ of Certiorari filed on behalf of Jane Roe, II, largely because of Dr. Egherman's obligations pursuant to Rule 15(2) of the Rules of the Supreme Court of the United States. This rule requires Dr. Egherman to refute the factual distortions which are contained within Ms. Roe's Petition at this time. These factual distortions are reflective of a pattern which counsel for Ms. Roe has followed throughout the course of this litigation. In fact, Dr. Egherman originally moved to strike Ms. Roe's original Complaint in light of the unsubstantiated and scandalous material which was contained within that document. The District Court denied as moot the Motion to Strike the Complaint, although it did admonish Ms. Roe: "to conform with Federal Rule of Procedure requiring Complaints to contain a short and *plain* statement of the claim." District Court order at page 12. (Emphasis in original).

The Complaint which Ms. Roe filed to initiate this claim accurately alleges that Aware Woman owns a reproductive health facility located at 1564 Dixie Way, in Melbourne, Florida. The Complaint further alleges that Ms. Roe entered the Aware Woman facility on March 29, 1997, for the purpose of obtaining reproductive health services in the form of an abortion. According to the Complaint, Ms. Roe was placed in the operating room where an ultrasound device was applied to assist Dr. Egherman in performing the procedure.

After the procedure was initiated, again according to the Complaint, Ms. Roe felt pain in her abdomen. At this time, Ms. Roe requested an ambulance to take her to an emergency room at a local hospital. Aware Woman's staff then allegedly held Ms. Roe on the operating room table while Dr. Egherman continued the abortion procedure. Ms. Roe alleges in her Complaint that she suffered a perforated uterus and a colon laceration as well as other physical and emotional pain and suffering as a result of this procedure. Based upon these allegations, Ms. Roe alleges in her Complaint that Aware Woman and the other Defendants to the lawsuit violated FACE by interfering, intimidating, and using a physical obstruction to restrain Ms. Roe and render impassable her desired egress from the facility.

Based upon these factual allegations, Dr. Egherman, as well as the other Defendants to this lawsuit, filed Motions to Dismiss. The basis of the Motion to Dismiss was the fact that Ms. Roe had failed to allege all of the requisite elements of a cause of action under FACE. Specifically, in order to state a cause of action under FACE, a plaintiff must allege the following three elements: 1) the defendant engaged in the physical obstruction of a reproductive health facility; 2) the defendant intended to interfere with or attempted to interfere with persons attempting to gain entrance to or egress from a reproductive health facility; 3) the intentional interference with persons entering or exiting the facility was done for the express

purpose of preventing such persons from obtaining or providing reproductive health services. ***United States v. Wilson***, 2 F.Supp.2d 1170, 1171 (E.D.Wis. 1998).

Accepting all of the well pled factual allegations of Ms. Roe's Complaint as true, Dr. Egherman argued, and the District Court agreed, that Ms. Roe's initial Complaint failed to state a cause of action under FACE. The Complaint's defect was that there was no allegation to satisfy the third element of the cause of action, namely that Dr. Egherman's actions were *motivated* by a desire to prevent Ms. Roe from obtaining reproductive health services. The District Court's order dismissing Ms. Roe's Complaint was entered without prejudice, allowing her a period of ten days in which to file an Amended Complaint. Rather than following this course, Ms. Roe instead elected to file a Notice of Appeal to the Eleventh Circuit Court of Appeals. This cause has been briefed at the Eleventh Circuit, and oral argument was heard on November 3, 2000. As of the date of this Opposition Brief, no ruling has been issued by the Eleventh Circuit in this case.

The foregoing is a plain statement of the facts reflecting the well pled allegations of Ms. Roe's Complaint, as well as the nature of the proceedings below. Unfortunately, contrary to the rules of this Court, but consistent with the manner in which this case has been prosecuted since its inception, Ms. Roe's Petition for Writ of Certiorari contains a number of scandalous and unsubstantiated allegations which are unsupported by anything within the record, and instead constitute mere opinions of Ms. Roe's counsel. As part of the background to this case, Ms. Roe has elected to characterize the reaction of local law enforcement officials to this Court's decision in ***Madsen v. Women's Health Center, Inc.***, 512 U.S. 753, 114 S.Ct. 2516, 129 L.Ed. 2d 593 (1994). These references are absolutely irrelevant to the instant action, and constitute a deviation from the dictates of the Rules of the Supreme Court of the United States.

Ms. Roe goes on to state in her Petition that Aware Woman applied "assembly line procedure" after the ***Madsen*** decision, and that there were an increasing number of serious injuries to female patients. These statements are patently false, constitute yet another deviation from the rules of this Court, and warrant an order striking the unsupported and scandalous content.

Ms. Roe goes on to state in her background portion of her Petition for Writ of Certiorari that Dr. Egherman killed but did not remove the unborn child from Ms. Roe's body, and that the dead child was removed from her uterus at the emergency room subsequent to the abortion procedure. Again, there is absolutely nothing in the record to support these allegations. Instead, they simply constitute an effort by Ms. Roe and her counsel to inflame the passions of the reader, rather than seeking the objective legal review which this Court must perform.

ARGUMENT

Dr. Egherman opposes the legal arguments which Ms. Roe has presented to the trial court, to the Eleventh Circuit Court of Appeals, and to this Court, both on the issues raised in Dr. Egherman's Motion to Dismiss, and Ms. Roe's Motion to Proceed Anonymously. Specifically, Dr. Egherman believes that the District Court correctly determined that Ms. Roe failed to state a cause of action under FACE in her Complaint because she failed to allege that the Defendants' blocking of Ms. Roe's egress from the facility was motivated by a desire to prevent Ms. Roe from obtaining reproductive health services. A review of the Complaint demonstrates that there is no such allegation to support a claim that Dr. Egherman or any of the Defendants to the lawsuit had any such motivation. As such, Ms. Roe's Complaint fails as a matter of law.

Rather than taking advantage of the opportunity to amend her Complaint as was offered by the District Court, Ms. Roe chose instead to file a Notice of Appeal. The filing of this Notice of Appeal constituted a statement by Ms. Roe that she intends to stand on the allegations of her Complaint as they are currently worded. Otherwise, the appellate court would not have jurisdiction to review the decision of the District Court. Thus, a final decision on the merits of this cause must be made based on the language of the Complaint as it is currently worded.

Aware Woman also takes issue with the substantive legal arguments presented to the District Court, the Eleventh Circuit Court of Appeals, and to this Court, regarding Ms. Roe's ability to proceed anonymously. Although there is a right to privacy which protects those individuals who seek to exercise their freedom of choice by electing to seek reproductive health services through facilities such as Aware Woman, this does not automatically mean that a plaintiff who chooses to file a lawsuit against such a facility may abrogate the Constitution of the United States and the Federal Rules of Civil Procedure which create a strong presumption in favor of the disclosure of the

identity of the parties to a lawsuit. Ms. Roe bears an extraordinarily heavy burden in this regard, a burden which she failed to carry at the trial court level. The District Court did not abuse its discretion in denying Ms. Roe's Motion to Proceed Anonymously.

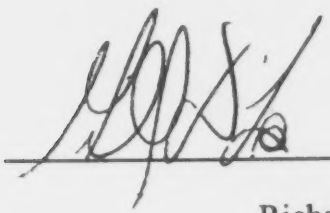
However, in spite of the substantive differences which Dr. Egherman has with the legal positions which Ms. Roe has taken throughout the course of this litigation, and in spite of the opposition which Dr. Egherman has expressed as to the superfluous and scandalous "factual" allegations contained within virtually every document Ms. Roe has filed in this litigation, Dr. Egherman does agree that the issues raised in this case are of such great public importance that it would be appropriate for this Court to grant Ms. Roe's Petition for Writ of Certiorari. By doing so, this Court would allow the parties to fully brief the substantive legal issues on the merits. Such a decision by this Court would allow this Court to definitively state the proper application of FACE, and specifically whether the act requires a plaintiff to allege motive on the part of the defendant to prevent an individual from obtaining reproductive health services as one of the elements in order to state a cause of action, as has been universally held by lower courts.

Granting Ms. Roe's Petition for Writ of Certiorari would also allow the parties to fully brief on the merits the issue of whether Ms. Roe should be allowed to proceed anonymously in this action. A decision to allow the parties to present this issue for this Court's review would allow this Court to formulate a coherent rule of law for litigants to follow, defining those rare exceptions to the general constitutional and procedural requirements that a party to a lawsuit identify herself at the lawsuit's inception. .

CONCLUSION

In spite of Dr. Egherman's opposition both to Ms. Roe's substantive legal arguments and to Ms. Roe's factual distortions which have been presented throughout the course of this litigation, Dr. Egherman does not oppose this Court's granting the relief which Ms. Roe has requested in her Petition for Writ of Certiorari, in order to allow the parties to this litigation to fully brief and argue all of the substantive issues on the merits.

Respectfully submitted,



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IN THE

SUPREME COURT OF THE UNITED STATES

Jane Roe, II,

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v.

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY TO BRIEFS IN OPPOSITION

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NOTE TO THE UNITED STATES SUPREME COURT OF RELATED PETITIONS ALREADY FILED WITH THE COURT:

Meredith T. Raney, Jr., v. Aware Woman Center For Choice, Inc., et al. Supreme Court no. 00-1268

Meredith T. Raney, Jr., v. City of Melbourne, Florida, Supreme Court no. 00-1350

Ray Sienkiewicz v. John McDougall, individually, et al., Supreme Court no. 00-1365

Ray Sienkiewicz v. Larry Hart, individually, et al. Supreme Court no. 00-1419

Ray Sienkiewicz v. John McDougall, individually, et al. Supreme Court no. 00-1498

ADDITIONAL APPEAL TO BE TAKEN

Ray Sienkiewicz was notified on March 26, 2001 that the district court had dismissed with prejudice the F.A.C.E. action against Larry Hart, individually, et al., which is the case from which the petition for writ of certiorari was brought in Supreme Court number 00-1419. It is expected that an appeal will be taken to the U.S. Court of Appeals and thereafter a petition for writ of certiorari to review the case will then be filed pursuant to Supreme Court Rule 11.

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REPLY TO DR. EGHERMAN

Jane Roe, II, applauds the rare courage of Dr. Egherman in joining with her to request that the Supreme Court issue a writ of certiorari to review this case, as a matter of great public importance justifying the variance from normal appellate practice.

That Dr. Egherman vehemently disagrees with Jane Roe, II's presentation of the facts is to be expected in a gruesome case of this sort.

Nevertheless, the joint request of these two opposing parties should suffice to establish the need for the extraordinary relief sought.

REPLY TO AWARE WOMAN CENTER FOR CHOICE

Like Dr. Egherman, the parties known collectively as "Aware Woman Center For Choice", have clearly demonstrated to the Supreme Court that it should issue a writ of certiorari to review this case. In Dr. Egherman's instance, he plainly stated that the Roe, II request should be granted. While Aware Woman Center For Choice takes the opposite position, the precedents and authority on which they rely show that Dr. Egherman and Jane Roe, II are entitled to issuance of the writ.

PUBLIC IMPORTANCE

The cases cited by Aware Woman Center For Choice on the question of public importance are *United States v. Nixon*, 418 U.S. 683 (1974) and *Dames & Moore v. Regan*, 453 U.S. 634 (1981) which involved charges of wrongdoing by our top federal officials. So, too, do the related cases.

The setting presented in the related cases of *Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc., et al.*, Supreme Court number 00-1268 and *Meredith T. Raney, Jr. v. City of Melbourne, Florida*, Supreme Court number 00-1350 was used by our top federal officials as a model to prevent distraught young women from receiving the loving, lawful help of pro-life referral counselors. This was done for personal gain - whether political or economic or both - on behalf of the abortion industry.

This program was placed in effect all over this country by the United States Department of Justice: it unlawfully and corruptly procured local police as nothing more than vicious attack dogs to prevent distraught young women from receiving vital help and information from pro-life referral counselors. The result has been innumerable more abortions. There has also been much felonious harm to women, including death.

One such death, from mistreatment at the Azima abortion clinic in North Ft. Myers, Florida last August, is an apparent reason for the unfortunate decision in *Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc.*, 224 F.3d 1266 (11th Cir. 2000). That decision in turn caused the miscarriage of justice in *Raney v. City of Melbourne*, ___ F. 3d ___ (11th Cir. 2000), and has been the catalyst for all of these related petitions. The guilty parties appear to include a former president and attorney general of this country, as well as a present member of the United States Court of Appeals to which all of these cases were initially taken.

Ray Sienkiewicz v. Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack, Supreme Court number 00-1419, is a corollary to the cases of *Ray Sienkiewicz v.John McDougall, individually, et al.*, Supreme Court number

00-1365, and *Ray Sienkiewicz v. John McDougall, individually, et al.*, Supreme Court number 00-1498. The *Sienkiewicz* cases are all the result of the civil and criminal wrongdoing apparently orchestrated by our top government executives with the assistance of one who is now an appellate judge. The criminal liability for these respondents may be life in prison for felony murder.

Thus, the threshold for a Rule 11 case review by the United States Supreme Court has been crossed by *Jane Roe, II*. The *Nixon* (*supra*) and *Regan* (*supra*) decisions show this to be so. Our highest former executive officers and an appellate judge now on the federal bench stand accused of barbaric treatment of millions of young pregnant women trying to cope with crisis pregnancies. The delay by the Court of Appeals in ruling on this case may well be linked to that wrong-doing. This is a case of imperative public importance justifying deviation from normal appellate practice and requiring immediate determination in this Court.

ANONYMITY

Anonymity is Privacy's cloak.

Here there is no public outcry that Jane Roe, II be stripped of her cloak. That demand comes solely from cruel and arrogant parties who know that they will be able to evade justice for their awful crime if the order below is allowed to stand.

Jane Roe, II was already worried that day in Melbourne, there in the abortion facility featured in *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994). She could tell at the start that the abortionist was not going to perform the abortion correctly. She ordered him to stop. Instead she was then held on the table by four assistants after which the

abortionist inserted some instrument - against her will - into her vagina and proceeded to slash her colon and her uterus. Her degradation was equal to or worse than rape which was described in *Coker v. Georgia*, 97 S.Ct. 2861 (1977).

There, this Court described such horrors as follows:

> It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's privilege or choosing those with whom intimate relationships are to be established. Short of homicide, it is the "ultimate violation of self". Page 2869 .

Later , this Court discussed the nature of decisions made by women about abortion in cases such as *Thornburg v. American College of Obst.*, 106 S.Ct. 2169 (1986), saying at page 2181:

> The decision to terminate a pregnancy is an intensely private one that must be protected in a way that assures anonymity.

Several years later, the *Thornburg* (*supra*) rulings were reviewed in *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992), when this Court stated at page 2816:

> Although we must overrule those parts of *Thornburg* and *Akron I* which, in our view, are inconsistent with *Roe*'s statement that the State has a legitimate interest in promoting the life or potential life of the unborn . . ., the central premise of these cases represents an unbroken commitment by this Court to the essential holding of *Roe*.

Earlier in the *Casey* (*supra*) decision, this Court had reaffirmed the intimate nature of abortion:

> These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. Page 2807.

Thus, such injury as was suffered by Jane Roe, II, in an abortion clinic, is a matter of a highly sensitive and personal nature which insures a young woman the anonymity guaranteed by the U.S. Court of Appeals, Eleventh Circuit, in *Doe v. Frank*, 951 F.2d 320 (11th Cir. 1992), which listed several circumstances permitting the use of anonymity in the course of litigation.

One of the several circumstances in which a plaintiff may retain her anonymity in "*Doe*" cases are those involving "information of the utmost intimacy." , *Doe v. Frank*, (*supra*) at page 323. It is impossible to imagine a situation which demands anonymity more than the case at hand, even though the respondents obviously believe themselves to be above the law.

And, contrary to Aware Woman Center For Choice's inference, there is no immunity in 18 U.S.C. §248 for abortion clinic personnel. They, too, can be sued for violating F.A.C.E. This was done in *Greenhut v. Hand*, 996 F. Supp. 372 (D.N.J. 1998), where a clinic worker was sued successfully by a pro-life referral counselor who had been threatened with murder for helping women in the worker's abortion facility.

Anonymity was allowed in the case of *Roe v. Little Company of Mary Hospital*, 800 F.Supp. 620 (N.D. Ill. 1992),

where the plaintiff claimed to have been infected with the HIV virus. Jane Roe, II acknowledges that cases such as hers and *Little Company of Mary Hospital*, (*supra*), require some extra effort on the part of the participants; however, this Court in *Richmond Newspapers v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, advised the litigants that public trials on rare occasions may require some modifications by the trial court. Here Jane Roe, II is not seeking to exclude the public from her civil trial: she seeks only to preserve her anonymity.

In the case of *Adams v. Family Planning Assoc. Med. Group, Inc.*, 733 N.E. 2d 766 (Ill. App. 2000), the thirteen year old child failed to insist on anonymity for the simple reason that she had been killed in an "assembly line" abortion. The wrongful death action was brought by her personal representative. This little girl's cloak of anonymity is buried with her in her untimely grave.

Yet, while one is still alive, that right may be waived. Apparently in *Greene v. Legacy Emanuel Hospital and Healthcare Center*, 997 P.2d 265 (Or. App. 2000), the abortion clinic victim chose to waive her right to anonymity at the start of her litigation. The decision to do so was hers - and hers alone. The same can be said for Norma Mc Corvey (*Jane Roe*) and Sandra Cano (*Mary Doe*).

Many years after their cases, *Roe v. Wade*, 35 L. Ed. 2d 147 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973), became the law of the land, these two women chose to reveal their true identities. Both women have renounced their former roles in abortion jurisprudence and have publicly repented of the evil to which they were a part. No one, though, begrudged them the right to maintain their anonymity for as long as they wanted.

Here the objection to anonymity comes only from those

seeking shelter from Justice's wrath. Aware Woman Center For Choice knows the true identity of this young victim. They only seek to drive her from the federal courts by their judge-approved threat to strip her of her privacy and to force her once again to suffer grievous shame and embarrassment. Without the intercession of this Court, they will succeed in doing so.

MOTIVE

Jane Roe, II expects that later discovery in this cause will disclose all or some of the following F.A.C.E. counts:

1. Jane Roe, II was unlawfully prevented from leaving the Aware Woman facility because she had been receiving reproductive health services there.

2. Jane Roe, II was unlawfully prevented and physically obstructed in the Aware Woman facility because the respondents did not want her to receive reproductive health services, which included counseling and referral information, from the rescue squad.

3. Jane Roe, II was unlawfully prevented from leaving the Aware Woman facility because the respondents wanted to force her to thereafter obtain reproductive health services from them.

4. Jane Roe, II was unlawfully prevented from entering another facility because the respondents did not want her to receive reproductive health services there.

All of the foregoing possible counts may be readily deduced from the present pleadings.

Jane Roe, II has alleged in her complaint that the respondents intentionally and unlawfully violated F.A.C.E. At this point she is uncertain of exactly what the various participants had in the way of motives. The U.S. Court of Appeals in *United States v. Dinwiddie*, 76 F. 3d 913 (8th Cir. 1996), discussed the motive requirement of F.A.C.E., saying at page 922:

> FACE's motive requirement . . . limits the statute's application to those who engage in proscribed conduct "because [the victim] is or has been, or in order to intimidate [the victim] from, obtaining or providing reproductive health services . . ." 18 U.S.C. §248(a)(1).

Thus any or all of the above four possible counts will satisfy the motive requirement of F.A.C.E. Discovery will provide the definitive answer. In the meantime, respondents have been put on fair notice about Jane Roe, II's claim.

This Court in *Conley v. Gibson*, 355 U.S. 41 (1957), ruled that a complaint such as the one filed by Jane Roe, II should not be dismissed. At page 103, it was held:

> [A]ll the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests... Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pre-trial procedures... Following the simple guide of Rule 8 (f) that "all pleadings shall be so construed as to do

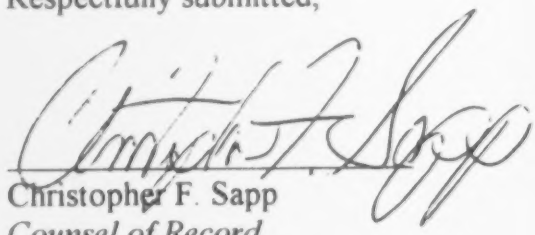
> substantial justice", we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis.

Thus, Jane Roe, II's complaint does state a cause of action.

CONCLUSION

Jane Roe, II, respectfully requests that this Court consider the need for privacy on the part of young women in all parts of America. They should not be given over to degradation and abuse with no hope of Justice. Without the cloak of anonymity, a great many of them will be fair game for sexual abuse and for forced abortions. Accordingly, Jane Roe, II believes that the writ of certiorari should be issued. She is joined in that request by one of the respondents, William P. Egherman, M.D.

Respectfully submitted,



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